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Counsel for Plaintiff
GREEN VALLEY CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GREEN VALLEY CORPORATION, a
California corporation, dba Barry Swenson
Builder,

Plaintiff,

v.

CALDO OIL COMPANY, a California
corporation; VICTOR J. LOBUE, as an
individual and as trustee of the Victor J. LoBue
Trust, the LoBue Living Trust and the LoBue
Family Trust; THE VICTOR J. LOBUE
TRUST; THE LOBUE LIVING TRUST; THE
LOBUE FAMILY TRUST; THE ESTATE OF
SALVADORE R. LOBUE, DECEASED; THE
ESTATE OF TANIE ANN LOBUE,
DECEASED; and DOES 1 through 100,

Defendants.

AND RELATED COUNTERCLAIMS, THIRD
PARTY CLAIMS AND CROSSCLAIMS.

No. 09-CV-04028-LHK

STIPULATION AND ~~PROPOSED~~
ORDER OF DISMISSAL

FED. R. CIV. P. 41(a)(2)

Action filed: August 31, 2009
Trial date: January 23, 2011

AS MODIFIED BY THE COURT



STIPULATION OF DISMISSAL

All parties to this action, including Plaintiff Green Valley Corporation ("Green Valley"), Defendants Caldo Oil Company, Victor J. LoBue, the Victor J. LoBue Trust, the LoBue Living Trust, the LoBue Family Trust, the Estate of Salvadore R. LoBue, Deceased, and the Estate of Tanie Ann LoBue, Deceased (collectively, "Caldo"), and Third-Party Defendants All Environmental, Inc. and Peter McIntyre (collectively, "AEI"), have settled this action. *See* Notice of Settlement, filed Dec. 9, 2011, Dkt. No. 238. A true and correct copy of the Settlement Agreement, which the parties agree is enforceable, is attached hereto as Exhibit A.

It is hereby stipulated by and between Green Valley, Caldo and AEI, through their designated attorneys of record, that this action shall be dismissed as set forth herein with mutual waivers of costs, including attorneys' fees, pursuant to Federal Rule of Civil Procedure 41(a)(2). William Nagle is empowered by the parties to enforce the Settlement Agreement, including, in particular, to determine if a party (or its consultant) is not acting in good faith to expedite the site closure and regarding whether liquidated damages are thus not applicable.

Green Valley, Caldo and AEI wish to retain the Court's jurisdiction to enforce their Settlement Agreement and, therefore, respectfully request that the Court incorporate the Settlement Agreement into its Order of Dismissal. "Parties who wish to retain the court's jurisdiction to enforce their settlement agreement may do so . . . by *incorporating the terms* of the settlement agreement in the order of dismissal. In [that] event, breach of the settlement agreement violates the court's order, thereby creating *ancillary jurisdiction* to enforce the agreement." *See* CAL. PRAC. GUIDE: FED. CIV. PRO. BEFORE TRIAL, Ch. 15-C, § 15:141.1 (The Rutter Group 2011) (emphasis in original) (*citing Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 381 (1994), *Hagestad v. Tragesser*, 49 F.3d 1430, 1432 (9th Cir. 1995), and *Hill v. Baxter Healthcare Corp.*, 405 F.3d 572, 576-577 (7th Cir. 2005)). "[T]he court clearly has ancillary jurisdiction to enforce its own orders and decrees. . . . Therefore, to the extent the settlement is embodied in the judgment, the court can enforce it by execution and by contempt proceedings in appropriate cases." *Id.*, § 15:141.18 (*citing TNT Marketing, Inc. v. Agresti*, 796 F.2d 276, 278 (9th Cir. 1986)).

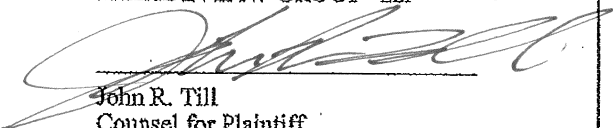
IT IS SO STIPULATED.



1 By signing below, counsel certify that they have the authority to bind, and are binding, the party
2 or parties that they are signing on behalf of.


3 DATED: December 16, 2011

PALADIN LAW GROUP® LLP

4 
5 John R. Till
6 Counsel for Plaintiff
7 GREEN VALLEY CORPORATION

8 DATED: December 16, 2011

GARRISON LAW CORPORATION

9 
10 Gregg Garrison
11 Counsel for Defendants
12 CALDO OIL COMPANY, VICTOR J.
13 LOBUE, THE VICTOR J. LOBUE TRUST,
14 THE LOBUE LIVING TRUST, THE LOBUE
15 FAMILY TRUST, THE ESTATE OF
16 SALVADORE R. LOBUE, DECEASED, and
17 THE ESTATE OF TANIE ANN LOBUE,
18 DECEASED

19 DATED: December 16, 2011

20 WILSON, ELSER, MOSKOWITZ,
21 EDELMAN & DICKER LLP

22 
23 Andrew Smith
24 Counsel for Third-Party Defendants
25 ALL ENVIRONMENTAL INC.
26 and PETER MCINTYRE

27 ORDER OF DISMISSAL

28 The Court orders that this action shall be and hereby is dismissed with prejudice, with mutual
waivers of costs, including attorneys' fees, pursuant to Federal Rule of Civil Procedure 41(a)(2) and
pursuant to the parties' Settlement Agreement, see Exhibit A, which the Court incorporates herein and
retains jurisdiction to enforce. The Clerk shall close the file.

IT IS SO ORDERED.

DATED: December 16, 2011


LUCY H. KOH
United States District Judge

